SUBJECT: Audit Report 2008-10 - Long Term Contract Review - Maple Reinders Constructors Ltd. (CM09009) (City Wide)

RECOMMENDATION:

(a) That Report CM09009 respecting Audit Report 2008-10, Long Term Contract Review, Maple Reinders Constructors Ltd., be received; and

(b) That the management actions plans as detailed in Appendix “A” of Report CM09009 be approved and the Acting General Manager of Public Works direct the appropriate staff to have the plans implemented.

EXECUTIVE SUMMARY:
The 2008 Internal Audit work plan approved by Council included the review of the long term contract with Maple Reinders Constructors Ltd. (the “Contractor”) to operate the Central Composting Facility (CCF) including the receipt of materials, processing of waste into compost and storage, marketing and disposition of the finished product. The City’s management and administration of the contract was assessed as well as the Contractor’s and City’s compliance with individual contract terms and clauses.
The results of the review are included in a formal audit report attached as Appendix “A” of Report CM09009. In general, the contract has been managed adequately with both parties adhering to the principal requirements and terms of the contract. A few recommendations concerning: (i) timing for provision of Contractor’s documents; (ii) regular review and updating of procedures and employee training program; and (iii) a formal written reply to be sent to the complainant within the prescribed period of time were made in the Report.

**BACKGROUND:**

On December 21, 2005, a contract was entered into by the City and Maple Reinders Constructors Ltd. to carry out the operation of the Central Composting Facility (CCF). The contract included terms and requirements concerning the receiving and processing of organic waste materials delivered to the CCF, handling, storing and marketing of the finished compost and disposing of all the residue generated. The Contractor was also to administer all facets of the CCF operation such as maintenance of equipment and management of personnel on site. As agreed to by the City, the CCF has been operated by Aim Environmental Group Ltd. (a sub-contractor of the Contractor) since 2006.

The City compensates the Contractor based on the quantity of waste material processed at CCF (2007 – 28,533 tonnes) and the City receives $.02 per tonne for the waste materials provided by the City and 25% of the revenue generated from the sales of the finished compost (2007 - $6,514).

The fieldwork for this review was conducted in the fall of 2008. The work focused on compliance with the terms of the agreement and the administration of the contract by the Waste Management division of the Public Works Department.

The Audit and Administration Committee receives and approves final audit and review reports as its responsibilities for the oversight of governance and control.

**ANALYSIS/RATIONALE:**

Within the contract, there are many clauses which define specific terms and conditions to be met by the Contractor as well as the City. This review focused on the following Articles and Schedules:

- Article 3 Composting Operations
- Article 5 General Operation of the CCF
- Article 6 Maintenance of CCF and Equipment
- Article 7 Staffing, Facilities and Training
- Article 9 Compensation
- Article 10 Marketing and Sale of Finished Compost
- Article 19 Environmental Conditions of the CCF
- Article 20 Health and Safety
- Article 21 Insurance
- Article 23 Security for the Performance of the Contract
- Schedule B Compensation
- Schedule J Guidelines for Compost Quality from Canadian Council of Ministers of the Environment (CCME)
Details of the review of these Articles and Schedules are provided in Appendix “A” of Report CM09009.

Based on Internal Audit’s observations on site, the review of records and documentation and corroboration obtained from the management of the City’s Waste Disposal section, the operational requirements of the contract have been met.

However, some administrative matters need to be addressed for full compliance with the terms of the contract. The recommendations made in this regard were:

- Review and updating of the documented policies and procedures and the employee training program document to include items noted in the contract. Evidence of annual review should be retained.
- A formal reply in writing to the complainant within two working days of receiving the complaint.
- Required evidence of the Contractor’s insurance and continued Performance Bond within the timeframe noted in the contract.

Staff agreed with these recommendations and provided appropriate management action plans as noted in Appendix “A”.

As part of the contract, there are two Certificates of Approval (CofAs) issued by the Ontario Ministry of the Environment regarding the CCF operation, the terms of which must be complied with by the City and the Contractor. Having supplied the City’s Legal Services with various documentation and evidence collected during Internal Audit’s review, the Legal Services’ review did not reveal any significant issues of non-compliance with respect to the CofAs. Some issues were identified for staff consideration to provide stronger compliance with the documentary requirements of the CofAs for the CCF. Waste Management staff have indicated appropriate measures have or will be taken.

**ALTERNATIVES FOR CONSIDERATION:**
Not applicable.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**
None.

**POLICIES AFFECTING PROPOSAL:**
None.

**RELEVANT CONSULTATION:**
- Management and staff of Waste Management division of Public Works Department
- Sub-contractor – Aim Environmental Group Ltd.
- City’s Legal Services
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
The provision of efficient and effective waste disposal facilities is important to the residents of the community.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Ensuring the CCF operates in an efficient and environmentally responsive manner and in compliance with contract terms and regulations is necessary for the environmental well-being of the City.

Economic Well-Being is enhanced. ☑ Yes ☐ No
City Council's strategic commitment to "Best Practices - Best Value" under "A City That Spends Wisely and Invests Strategically" is addressed through audits and reviews and their subsequent follow up to ensure controls are in place to protect the assets of the City and promote efficient, effective and economic services and programs.

Does the option you are recommending create value across all three bottom lines?
☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes ☑ No

ap:dt
Attachment – Appendix “A”
Background
On December 21, 2005, a contract (the “Contract”) was entered into by the City of Hamilton (the “City”) and Maple Reinders Constructors Ltd. (the “Operator”) to carry out the operation at the Central Composting Facility (CCF) in conformance with the terms of the Contract including receiving and processing organic waste materials delivered to the CCF; handling, storing and marketing of the finished compost; and disposing of all residue generated. The Operator is also required to maintain a safe working environment at the CCF and to administer all facets of the CCF such as the maintenance of equipment and management of personnel on site. As agreed to by the City, the CCF has been operated by Aim Environmental Group Ltd. (a subcontractor of the Operator) since 2006.

As part of the 2008 Internal Audit work plan, Council approved the review of the long-term contract between the City and the Operator. The Contract is comprised of 26 Articles and 10 appended Schedules. This review focused on the following Articles and Schedules:

- Article 3 - Composting Operations
- Article 5 - General Operation of the CCF
- Article 6 - Maintenance of CCF and Equipment
- Article 7 - Staffing, Facilities and Training
- Article 9 - Compensation
- Article 10 - Marketing and Sale of Finished Compost
- Article 19 - Environmental Condition of the CCF
- Article 20 - Health and Safety
- Article 21 - Insurance
- Article 23 - Security for the Performance of the Contract
- Schedule B - Compensation
- Schedule J - Guidelines for Compost Quality from Canadian Council of Ministers of the Environment (CCME)

Based on Internal Audit’s personal observation on site, review of records and documentation and corroboration obtained from the management of the City’s Waste Disposal Section, the operational requirements of the Contract have been met. However, some administrative matters need to be addressed for compliance with the terms of the Contract.

Details of the review of the above focused Articles and Schedules are provided in the following text. In addition, recommendations for strengthening the process and ensuring compliance with the Contract will be made at the end of this report along with the corresponding management responses noted.

Focused Articles and Schedules
Article 3 – Composting Operations
Sections 3.1 to 3.39 stipulate requirements for receiving hours, capacity, handling of waste materials, disposal of residue, and quality of finished compost. There is compliance with the terms of Article 3 except for the following:
• Section 3.8 requires that the screening measures (that are part of the Operations Plan) be reviewed and updated annually by both the Operator and the Contract Administrator (from the City). Although the Contract Administrator indicates that these measures continue to be followed as they have worked effectively, there was no written evidence, at the time of audit, indicating the annual review and/or update required since April 2006 had taken place. Therefore, there is non-compliance with the terms of this provision.

Article 5 – General Operation of the CCF  
Sections 5.1 to 5.15 dictate requirements for the general operation of the CCF. There is compliance with the terms of Article 5 except for the following:

• Section 5.13 mandates that a formal reply be forwarded to a complainant in writing outlining the actions taken to address the complaint within two working days of receiving the complaint. At the time of audit, there was no evidence of such written formal reply. The City's Project Manager on site is made aware of these complaints immediately. As most of the complaints came from the neighbouring area, a face-to-face visit with the complainant usually takes place in lieu of a formal reply in writing. However, with respect to the requirements as stated in the terms of this provision, there is non-compliance.

Article 6 – Maintenance of CCF and Equipment  
• Sections 6.1 to 6.18 stipulate the Operator's responsibilities for maintaining, repairing and replacing buildings, fixtures, civil works and equipment throughout the term of the Contract. Based on audit work performed, the Operator is in compliance with the terms of this Article.

Article 7 – Staffing, Facilities and Training  
Sections 7.1 to 7.15 require the Operator to meet certain standards for staffing, employee training and facility management. There is compliance with the terms of Article 7 except for the following:

• Section 7.10 requests the Operator to develop and update an employee training program that includes the credentials of the trainer, the duration of the training course, the specific content of the training course, the frequency of retraining, the schedule for updating staff training and the criteria to determine whether a trainee has met training objectives. Based on Internal Audit's review of training records for the Operator's employees on site, all the items specifically required under this Section were not included. Therefore, the Operator is non-compliant with the terms of this clause.

Article 9 Compensation  
• Sections 9.1 to 9.9 outline the processes, methods and calculations associated with the City's payments to the Operator for all waste materials processed at the CCF. Based on audit work performed, there is compliance with the terms of this Article.

Article 10 Marketing and Sale of Finished Compost  
• Sections 10.1 to 10.4 stipulate the Operator's responsibilities for marketing, selling and where appropriate, disposing of the finished compost produced at the CCF. Based on audit work performed, the Operator is in compliance with the terms of this Article.
Article 19 – Environmental Condition of the CCF
Sections 19.1 to 19.6 define the City’s and the Operator’s responsibilities pertaining to the environmental condition of the CCF. There is compliance with the terms of Article 19 except for the following:

- Section 19.6 requires the Operator to develop a written protocol for the mitigation of and for the appropriate remedial actions for any spill and escape of hazardous substances. The Operator is also required to review this protocol annually.

Based on Internal Audit’s observation, the written protocol is available for review and thus the Operator is in compliance as far as developing the protocol. According to the City’s Project Manager on site, the original protocol remains in effect and thus requires no amendment. However, at the time of audit, there was no evidence provided of the Operator’s annual review of this protocol as indicated under the terms of this section. Thus, in regard to the review requirement, there is non-compliance.

Article 20 Health and Safety

- Sections 20.1 to 20.4 stipulate the Operator’s responsibilities for making the CCF a safe and healthy work environment and for keeping a certificate of good standing from the Workplace Safety & Insurance Board (WSIB). Based on audit work performed, the Operator is in compliance with the terms of this Article.

Article 21 Insurance
Sections 21.1 to 21.8 require insurance policies to be obtained and maintained by the Operator. There is compliance with the terms of Article 21 except for the following:

- Section 21.6 directs the Operator to deposit with the City evidence of its insurance no later than 30 days prior to the renewal date during the Contract term. The insurance certificates for 2008 provided to the City were dated September 4, 2008 while the insurance coverage had begun either from June 1, 2008 or August 1, 2008, depending on the individual insurance policy. As the provision stipulates a “30 days prior to the renewal date” timeline and this has not been adhered to, there is non-compliance with the terms of this clause.

Article 23 Security for the Performance of the Contract
Sections 23.1 to 23.6 set out detailed requirements for the letter of credit and performance bond from the Operator, acting as security for the performance of the Contract. There is compliance with the terms of Article 23 except for the following:

- Section 23.2 requires the Operator to provide the performance bond to the City at least 60 days prior to the Contract commencement date or 30 days prior to the beginning of each subsequent contract period. Per review of performance bonds for contract period 1 (i.e. 2006) and period 2 (i.e. 2007), the Operator was not in compliance with the terms of this provision as the performance bond for contract period 1 was dated 7 days prior to the Contract commencement date and the bond for contract period 2 was dated 12 days prior to the beginning of this period.

The performance bond for contract period 3 (i.e. 2008) was provided to the City 36 days prior to the beginning of this period and thus was in compliance with the terms of the provision.
Schedule B – Compensation
- Schedule B prescribes the payment rate per tonne for the waste materials processed at the CCF under the Contract. Based on audit work performed, there is compliance with Schedule B.

Schedule J – Guidelines for Compost Quality from CCME
- Schedule J stipulates the standards for the finished compost produced at the CCF. Based on audit work performed, there is compliance with the requirements set out in Schedule J.

Subsequent Information
Non-compliance with the sections listed below was originally noted during the audit. Upon discussion with management at the audit closing meeting, management took immediate actions and provided Internal Audit with additional information that had not been supplied at the time of audit. Based on further review of the new information, compliance with the following sections was confirmed:
- Section 5.10 & 5.11 – items to be included in the Contingency Plan
- Section 7.6 & 7.8 – evidence of keeping both the Health & Safety Manual and the Occupational Health & Safety Program up to date
- Section 23.2 – a copy of 2008 Performance Bond signed by the Operator

Recommendations and Management Responses
Policies, Procedures and Forms

It is recommended:
- That the existing employee training program be reviewed and updated to include all items required under Section 7.10.
- That existing policies and procedures such as the screening measures under Section 3.8 and the written protocol for mitigation of spills under Section 19.6 be reviewed annually and updated, as appropriate, with written evidence of review retained for future reference.

Management Response:
Agreed. The employee training program has been reviewed and all items required under Section 7.10 of the Contract have been put in place as of January, 2009. All policy and procedure documentation required under the Contract now includes a sign-off section that references the date of the annual review and the signature of the City staff member who conducted the review. This procedural change has already been implemented.
Complaint Response

It is recommended:
- That a formal reply in writing be forwarded to the complainant within two working days of receiving the complaint, explaining the possible causes and actions taken to eliminate the causes, as required under Section 5.13.

Management Response:
Agreed. To date, the Waste Management Division has conducted face-to-face visits with complainants as a more effective way to deal with people's concerns. A formal reply to the complainant within two working days shall be implemented immediately. However, in some instances, the investigation of the complaint may not be complete in this time frame. If this is the case, a formal reply with an update will be provided to the complainant and again when the investigation has been completed. This procedural change has already been implemented.

Insurance Certificate and Performance Bond

It is recommended:
- That the Operator be requested to provide evidence of its insurance to the City no later than 30 days prior to the renewal date for each remaining contract period, as stipulated in Section 21.6.
- That the Operator be requested to continue providing a signed performance bond to the City at least 30 days prior to the beginning of each remaining contract period, as required by Section 23.2.

Management Response:
Agreed. Staff will ensure that insurance certificates and performance bonds are received as required under the Contract.